

## SETTLEMENT AGREEMENT AND RELEASE

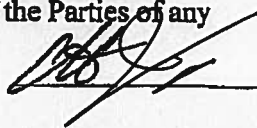
This Settlement Agreement and Release (this "Agreement") between Environmental Research Center, Inc. ("ERC") and Downright Healthy Foods, L.P., Johnvince Foods, and Tourmaline General Partner, Inc. (collectively "Downright Healthy") is made effective on the date on which it is fully executed (the "Effective Date"). ERC and Downright Healthy are hereinafter referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. This Agreement is intended to fully resolve all claims, demands, and allegations set forth in or related to the Notices of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on Downright Healthy on September 17, 2012 and July 19, 2013 (the "Notices") with regard to each of the following products identified below, as formulated for manufacture by or on behalf of Downright Healthy (referred to hereinafter individually as "Covered Product" or collectively as "Covered Products"):

- **Genisoy Food Company Inc. Soy Protein Bar Arctic Frost Crispy Chocolate Mint Flavor**
- **Genisoy Food Company Inc. Soy Protein Bar Ultimate Chocolate Fudge Brownie**
- **Genisoy Food Co., Inc. Soy Protein Shake Vanilla Flavor**
- **Genisoy Food Co., Inc. Soy Protein Shake Chocolate**
- **MLO Products Brown Rice Protein Powder Natural Vegan**
- **MLO Products Super High Protein Powder Natural**
- **Genisoy Food Co. Inc. Soy Protein Shake Vanilla Flavor with Other Natural Flavors**
- **Genisoy Delicious Soy Protein Bar - Fudge Cookies & Cream Flavor**
- **Genisoy Soy Protein Shake Strawberry Banana Flavor**
- **Soy Protein Ultra Shake Mix - Vanilla Flavor**
- **Genisoy Protein Crunch Peanut Butter**
- **Genisoy Food Co., Inc. – Genisoy Triple Layer Chocolate Caramel Flavor**
- **Genisoy Food Co., Inc. – Genisoy Café Mocha Fudge**
- **Genisoy Food Co., Inc. – Genisoy Ultra Soy Protein Shake for Improved Bone Health - Chocolate**
- **Genisoy Food Co., Inc. – Genisoy Ultra Soy Protein Shake for Improved Bone Health - Natural Flavor**
- **MLO Products Super High Protein Powder 454g**
- **MLO Products Bio Protein Bar Double Chocolate Flavor (81g)**
- **Genisoy Food Co. Inc. Soy Protein Powder Natural Protein Powder with Other Natural Flavors**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 (collectively "this Matter") and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any

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fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability whatsoever. The Parties agree that this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

a. Downright Healthy agrees that all Covered Products produced and offered for sale in California (and offered for sale to a third party for retail sale in California) on and after the 90th day following the Effective Date ("Compliance Date"), shall comply with California law, including Proposition 65.

b. Beginning on the Compliance Date, Downright Healthy shall not "Manufacture for Sale in the State of California", "Distribute into the State of California", or directly sell to an end-using consumer in the State of California, any Covered Product which exposes a person to a "Daily Exposure Level" of more than 0.5 micrograms of lead per day when the maximum suggested dose is taken as directed on the Covered Product's label, unless each such unit of the Covered Product bears the following warning statement on its individual unit label packaging or by sticker securely affixed on the container or bottle cap:

**"WARNING: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm."**

OR

**"WARNING: This product contains a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm."**

i. As used in this Settlement Agreement and Release, the term "Distribute into the State of California" shall mean to ship a Covered Product into California directly to a retailer that Downright Healthy knows will sell the Covered Product to an end-using consumer in California, or to sell a Covered Product to a distributor that Downright Healthy knows will sell the Covered Product in California. The term "Manufacture for Sale in the State of California" shall mean to manufacture a Covered Product that Downright Healthy knows will be sold to an end-using consumer in California.

ii. For the purposes of this Agreement, "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product

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per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

iii. The phrase "cancer and" must be included in the warning only if the maximum recommended daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered Product's label.

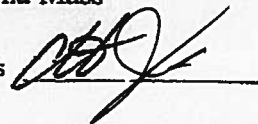
c. The warning statement set forth in Section 3b. shall be prominent and displayed securely on either the cap, the unit packaging, or by a sticker securely affixed to the Covered Products with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products. The warning appearing on the label or container shall be at least the same size as the largest of any other health or safety warnings correspondingly appearing on the label or container, as applicable, or such product, and the word "WARNING" shall be in capital letters and in bold print. No other statements may accompany the warning.

d. Downright Healthy shall arrange, for at least five (5) consecutive years and at least once per year, commencing one year from the Effective Date, for the lead testing of five (5) randomly-selected samples of five separate lots each year for each Covered Product that is available for purchase in California and not otherwise labeled with a warning pursuant to Section 3b herein, to confirm whether the Daily Exposure Level is more or less than 0.5 micrograms of lead when the maximum suggested dose is taken pursuant to the directions on the Covered Product's label. Downright Healthy shall provide ERC with any related documentation pursuant to Section 3.e.2, and shall include the lot identification numbers of the lots tested. Downright Healthy shall test samples in the form intended for the end-user to be distributed or sold to California consumers.

e. If, following testing under Section 3d, Downright Healthy is successful with reformulation for any of the Covered Products, and reduces the Daily Exposure Level to 0.5 micrograms of lead or below when taken pursuant to the maximum suggested dose as directed on the Covered Product's label, the Parties agree that the Covered Products may be offered for sale in California without the warning stated in Section 3b. If Downright Healthy is successful with reformulation on any of the Covered Products, Downright Healthy shall notify ERC and provide any test results for the Covered Products that document this change in formulation, no longer than 10 working days after Downright Healthy's receipt of the test results and prior to Downright Healthy manufacturing for sale in the State of California, or directly selling in the State of California, any Covered Products without the warning set forth in section 3(b).

(1) Pursuant to Sections 3d. and 3e., any such testing shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration. The method of selecting samples for testing must comply with the regulations of the Food & Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including Section 111.80(c). Testing for lead shall be performed using Inductively Coupled Plasma-Mass

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Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit Downright Healthy's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

(2) Pursuant to Sections 3d. and 3e., Downright Healthy shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC within fifteen (15) days of receipt of said data after conducting the required testing as set forth above. The requirement to provide all test data to ERC shall cease after five (5) years from the Effective Date.

4. Downright Healthy shall make a total settlement payment of \$50,388.00 ("Total Settlement Payment") by wire transfer to ERC's escrow account within 5 days of the Effective Date, for which ERC will give Downright Healthy the necessary account information. The Total Settlement Payment shall be allocated as follows:

a. \$11,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$8,250.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$2,750.00) of the civil penalty.

b. \$3,164.75 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Downright Healthy's attention and negotiating a settlement.

c. \$16,542.96 shall be considered reimbursement of attorney fees for Karen Evans, and \$19,680.29 shall be considered reimbursement for ERC's in-house legal fees.

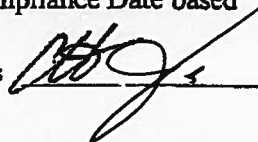
d. In the event that Downright Healthy fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the due date, Downright Healthy shall be deemed to be in material breach of its obligations under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

6. Binding Effect; Claims Covered and Released

a. ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives fully releases Downright Healthy and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives (collectively the "Releasing Parties") from any and all claims for violations of Proposition 65 up through and including the Compliance Date based

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on exposure to lead from the Covered Products as set forth in the Notices and any product manufactured, distributed, or sold by Downright Healthy up through and including the Compliance Date.

b. The Releasing Parties further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices.

c. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Covered Products and any product manufactured, distributed, or sold by Downright Healthy up through and including the Compliance Date will develop or be discovered. ERC on behalf of itself only, on the one hand, and Downright Healthy, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Compliance Date, including all rights of action therefore, and further acknowledge that the claims released in Section 6 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

ERC on behalf of itself only, on the one hand, and Downright Healthy, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

7. Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this agreement, nor shall it apply to any of Downright Healthy's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing Downright Healthy's continuing obligations to comply with Proposition 65.

9. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, its settlement, and this Agreement.

10. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This

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Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.
12. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.
13. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.
14. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.
15. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.
16. The Parties are aware and acknowledge that this Agreement is an out-of-court settlement and that they will not receive the protections afforded by a court-approved consent judgment. The Parties are entering into this Agreement in good faith and in an effort to settle all claims and allegations related to the Notices, and this Agreement applies only to the claims made by ERC and to the products identified in the Notices.
17. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing party in any such legal action shall be entitled to recover its attorneys' fees in addition to any other legally recoverable costs.
18. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

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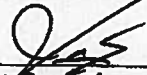
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19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: JAN. 27, 2015

DOWNRIGHT HEALTHY FOODS, L.P.


By: \_\_\_\_\_

  
Vincent Cosentino  
Title: Chief Financial Officer

DATED: JAN. 27, 2015

JOHNVINCE FOODS


By: \_\_\_\_\_

  
Vincent Cosentino  
Title: Chief Financial Officer

DATED: JAN. 27, 2015

TOURMALINE GENERAL PARTNER, INC.

By: \_\_\_\_\_

  
Vincent Cosentino  
Title: Chief Financial Officer

DATED: 1-20-2015

ENVIRONMENTAL RESEARCH CENTER

By: \_\_\_\_\_

  
Chris Heptinsteele, Executive Director

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